

# City of San José Board of Fair Campaign and Political Practices

### **MEETING MINUTES**

April 10, 2019

# I. Call to Order & Orders of the Day

#### Roll Call

PRESENT: Chair Adrian Gonzales and Board Members Kerstyn Olsen, Joe Lopez and Louis

Silver.

ABSENT: Vice Chair Peacock. (Excused)

STAFF: Deputy City Attorney, Mark Vanni, and Deputy City Clerk Ruth Krantz.

#### Call to Order

The members of the San José Ethics Commission convened at 5:49 p.m. in Room T-1446 of City Hall, 200 E. Santa Clara Street, CA 95113.

Adrian Gonzales explained the role of the Chair and Vice Chair to new Board Members Olsen, Lopez and Silver and called for nominations. Board Member Silver moved the nomination of Adrian Gonzales to the role of Board Chair. Board Member Silver seconded the motion. On a call for the question, the motion carried unanimously. Adrian Gonzales accepted the role of Chair of the Board of Fair Campaign and Political Practices. (3-0-1-1. Absent: Peacock. Abstain: Gonzales)

Board Member Lopez moved selection of Chris Peacock to the role of Vice Chair. Board Member Olsen seconded the motion. On a call for the question, the motion was carried, and Chris Peacock was elected to the role of Vice Chair of the Board of Fair Campaign and Political Practices

# Orders of the Day

<u>Action</u>: Upon motion by Board Member Joe Lopez, seconded by Board Member Louis Silver and carried unanimously, the Commission approved the adoption of the April 10, 2019 agenda. (4-0-1. Absent: Peacock.)

# II. Closed Session - None

## III. Hearings -

A. Hearing Re-Elect Magdalena Carrasco for City Council D5 2018 campaign committee in the matter of Imhoff-Dousharm v. Re-Elect Magdalena Carrasco for City Council D5 2018.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <a href="http://www.sanjoseca.gov/civiccentertv">http://www.sanjoseca.gov/civiccentertv</a>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

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Steven Miller and Catherine McGrath introduced themselves to new members of the Board. Mr. Miller provided an introduction to the report; Catherine McGrath provided the first two allegations, and Steven Miller offered the third. Miller indicated that they would be making a different recommendation than what was originally offered in the report. There was a question as to what amount was in the existing campaign fund. Miller indicated that Title 12 is ambiguous enough to ask for existing funds in the campaign fund account, and that the Board has the discretion to do so.

Miller noted that in a separate complaint filed by Mr. Imhoff-Dousharm, the penalty was reduced from \$6,000 to \$3,000 when the appellant provided an amended Form 460. Deputy City Attorney Mark Vanni confirmed that the Board has the power to request that campaign funds be used to pay the debt. He added that the statute from Title 12 be placed on the work plan for review. Chair Adrian Gonzales agreed that this item should be added to the work plan to streamline the existing laws.

An opportunity was provided for the respondent or complainant to speak. It was noted that neither was present to provide comments.

<u>Motion</u>: Board Member Silver moved insufficient evidence to sustain a violation of Section 12.06.710 as set forth in Allegation #1. The motion was seconded by Board Member Olsen.

<u>Motion</u>: Board Member Silver moved insufficient evidence to sustain a violation of Section 12.06.710 as set forth in Allegation #2. The motion was seconded by Board Member Lopez.

Motion: Allegation #3: Board Member Lopez moved to sustain a violation of Section 12.06.720, and Board Member Silver seconded the motion.

Discussion of appropriate corrective action followed.

<u>Motion</u>: Upon motion by Board Member Lopez and seconded by Board Member Silver, the appropriate remedy for this violation was recommended to be corrective action as indicated below.

Action: On a call for the question, the Board moved to sustain a violation of Section 12.06.720 with corrective action as follows: (a) Respondent must close its campaign bank account in conformance with Title 12 of the San José Municipal Code; (b) In closing its campaign bank account, Respondent must turn over all remaining campaign funds in its campaign bank account to the General Fund of the City of San José; (c) The campaign funds turned over by the Respondent to the General Fund may be used by Respondent to satisfy all or a portion of any outstanding penalties previously imposed on Respondent by the BFCPP. Additionally, Respondent must demonstrate to the City Clerk that it has taken corrective action on or before its next regularly scheduled meeting. If corrective action is taken to the satisfaction of the Board, the file in this matter may be closed. Failure by Respondent to take or demonstrate corrective action on or before the next regularly scheduled meeting of the Board may result in further administrative orders or penalties as determined by the Board. (4-0-1. Absent: Peackcock.)

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Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

<u>Action</u>: Board Member Lopez, seconded by Board Member Olsen and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings; and further, that the Commission authorize the Chair to approve and sign the resolution. (4-0-1. Absent: Peackcock.)

Investigators/Evaluators Steven Miller and Catherine McGrath left the meeting following the hearing.

#### IV. Consent Calendar

- A. Approve the Minutes of December 12, 2018 Regular Meeting
- B. Approve the Minutes of February 13, 2018 Regular Meeting

<u>Action</u>: The minutes were not drafted in time for this meeting, so approval is deferred to the next meeting of the Board.

# V. Reports

- A. Chair -None..
- B. City Attorney None.
- C. City Clerk
  - 1. Legislative update None.

## C. City Clerk

- 1. Status report on filings (Form 700, Campaign Statements, Lobbyists)
- 2. Elections update

<u>Discussion</u>: Deputy City Attorney Mark Vanni noted that the City Council approved a change to how the campaign contribution limit is calculated in anticipation of the March 2020 election.

Chair Gonzales requested hyperlinks be imbedded on future agendas under status report on filings. The Clerk concurred.

# D. Investigator/Evaluator:

Independent Investigator/Evaluator Steve Miller suggested that Section 12.06.070 of the San Jose Municipal Code should be added to the work plan for biennial review.

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#### VI. Old Business

A. Status on Independent Evaluator/Investigator RFQ

<u>Discussion</u>: Deputy City Clerk Ruth Krantz indicated only one RFQ had been received, and none had yet been received from Hanson Bridgett. The RFQ had been released via BidSync, but there may have been a problem going out to all recipients.

Action: Clerk's Office to follow up with a likely renoticing through BidSync.

B. Discussion and possible action on biennial review of San Jose Municipal Code Title 12, City Council Resolution 78390 and other administrative policies. (City Clerk)

<u>Discussion</u>: Chair Gonzales provided information to new Board Members on campaign-related ordinances. A review should be done by August since it will need to go into effect by the time campaign season begins, with changes going into effect by September. Chair Gonzales indicated he will draft a report with recommendations to be brought before the Council for their determination.

<u>Action</u>: Board Member Olsen volunteered for an ad hoc committee initiated by Chair Gonzales with a phone conference be set up to review the matrix and priority of recommendations. Chair Gonzales to draft a report regarding campaign-related ordinances.

C. Discussion and possible action on report from Ad Hoc Committee for Public Education Campaign. (Chair Adrian Gonzales and Vice Chair Chris Peacock)

<u>Discussion</u>: Chair Gonzales noted that he and former Deputy City Clerk Cecilia McDaniel and worked with an intern to create a public information pamphlet to inform the public about the Board with the idea of building partnerships with public agencies to disseminate the information. He noted that he and Board Member Peacock have worked on this project, and an update will be provided at the next meeting of the Board.

D. Discussion and possible action on report from Ad Hoc Committee for Complaint Intake Process. (Chair Adrian Gonzales)

The Vice Chair informed that a City Clerk intern had worked with the Board to research the complaint intake process used by other agencies, and an update would be presented next month.

<u>Action</u>: Board Member Lopez volunteered for an ad hoc committee initiated by Chair Gonzales and asked that a phone conference be set up to review the Complaint Intake Process.

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E. Scheduling of Special Board meeting if needed. (City Clerk)

None needed.

#### VI. New Business

Deputy City Attorney Mark Vanni provided a brief overview of the Brown Act to the new members of the Board.

### VII. Public Comment – None

# VIII. Future Agenda Items and Adjournment

Upon motion by Board Member Olsen, seconded by Board Member Lopez, and carried unanimously, the meeting of the Board of Fair Campaign and Political Practices was adjourned at 7:30 p.m.

ADRIAN GONZALES, CHAIR

ATTEST:

ELECTIONS COMMISSION SECRETARY

TONI J. TABER, CMC CITY CLERK